



## INTERIOR BOARD OF INDIAN APPEALS

Estates of William Comesatnight and Randall Eugene Tenas

6 IBIA 112 (06/28/1977)



## United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

ESTATE OF WILLIAM COMESATNIGHT	:	Order of Remand
Deceased Blackfeet Allottee 2829	:	
	:	IBIA 77-30
	:	IBIA 77-31
ESTATE OF RANDALL EUGENE TENAS	:	
Deceased Flathead U-7304	:	June 28, 1977

Appeals were received in the above-captioned matters involving claims by the Department of Institutions, State of Montana, for services rendered decedents while confined in Montana state institutions pursuant to Montana District Court Orders. The Department of Institutions further assert the decedent, William Comesatnight, was incompetent at the time the will was executed and consequently invalid.

Competency of decedent in no way affects the claim of the Department of Institutions, nor is that Department an heir at law. Accordingly, that portion of the Comesatnight appeal apropos the question of competency of decedent is dismissed.

Claims of preferred or general creditors may be compensated out of income derived from decedent's trust estate if found to be valid, by the Administrative Law Judge. See 43 CFR § 4.251(d).

Randall Eugene Tenas, Flathead, a 13-year old minor, was committed to Twin Bridges, a Montana state institution for boys because of his being a juvenile delinquent, on July 15, 1970. He died intestate on July 20, 1972, from acute alcoholic intoxication. The Department of Institutions, State of Montana, filed a claim for \$9,138.92 against the decedent's estate for custodial care of decedent from July 1970 to May 31, 1972. Administrative Law Judge Frances Elge allowed \$3,615.61 of the claim, exhausting decedent's estate which consisted of an I.I.M. account.

William Comesatnight, Blackfeet, adult, was found to be psychotic after being temporarily committed to Montana State Hospital on November 17, 1954, for mental observation for a period not to exceed 4 weeks.

He was further found to be so disordered in his mind as to endanger health, person or property and ordered to be confined in the Montana State Hospital at Warm Springs, Montana on January 19, 1955. It was ordered that hospital care and maintenance of Comesatnight was to be paid by the State of Montana because it appeared from evidence adduced at the detention hearing that Comesatnight had no means of support. It was further ordered in the event Comesatnight acquired an estate or income from which care and maintenance could be paid, then Comesatnight should pay same from said estate or income.

Comesatnight hanged himself on September 6, 1971. The Montana Department of Institutions filed a claim against the decedent's estate for \$17,401.76 for care and maintenance while decedent was confined. Decedent's estate was valued at approximately \$46,072.40. In addition there is approximately \$9,000.00 in the decedent's restricted monetary account. The claim was denied on November 26, 1976, for the reasons the obligation was assessed against a ward Indian after having been adjudged insane, without having been represented by a guardian ad litem, counsel, or an official of the Bureau of Indian Affairs.

In addition, the decedent's trustee, the Secretary of the Interior, was not a party to the proceeding nor was there evidence that decedent received notice thereof, much less that said trustee's local official, the Superintendent, Blackfeet Indian Agency, received notice of the proceeding or that he approved the obligation against the estate. Nor was there any evidence that petitioner ever sought payment from the Superintendent, Blackfeet Indian Agency, of any amount out of income from decedent's trust lands between the date of confinement, November 18, 1954, and the date of death, September 9, 1971, for decedent's maintenance at the State Hospital.

Petitioner cites sections 80-1601 through 80-1604 of Montana Revised Code (1947) as authority for compensation of these claims.

It appears that a pertinent section of the Montana Code is the following--

Monthly assessment of charges--Indians--annual computation of rate--application of payless--investigation and review--deposit of receipts. (1) The department shall assess monthly against each resident or responsible person the appropriate per diem charge. If the resident is an Indian who is a ward of the federal government, the per diem charge shall be assessed against the appropriate agency of the Federal Government \* \* \* R.C.M. 1947 § 80-1603(l).

Based upon the record as presently constituted there are many questions that should be answered prior to a determination being made as to compensability of these claims, such as, which government agency, if any, is responsible for compensating the Department of Institutions; whether compensation may be paid from income derived from trust estates of Comesatnight and Tenas; whether income derived from the estate of a minor Indian ward is liable for payment of Department of Institutions' claim etc.?

It would appear that these matters should be remanded to the Administrative Law Judge for consideration de novo of compensability of the Department of Institutions claims in the above-captioned matters, findings of fact and a decision. It is suggested that testimony be elicited from representatives of Indian Health, Department of Health, Education and Welfare, Social Services, Bureau of Indian Affairs, Billings, Montana, Department of Institutions, Montana, devisees and heirs.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, these matters are REMANDED to the Administrative Law Judge for consideration de novo of the claims of the Department of Institutions against the estates of Comesatnight and Tenas, including a hearing, findings of fact and a decision. The Judge is not limited to this issue.

Done at Arlington, Virginia.

//original signed

Mitchell J. Sabagh  
Administrative Judge

I concur:

//original signed

Alexander H. Wilson  
Chief Administrative Judge